

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WESLEY A. MASSEY,)	
Plaintiff,)	
)	C.A. No. 17-292 Erie
)	
v.)	
)	District Judge Susan Paradise Baxter
MICHAEL HOLMAN, et al.,)	Magistrate Judge Richard A. Lanzillo
Defendants.)	

MEMORANDUM ORDER

This prisoner civil rights action was received by the Clerk of Court on October 30, 2017 and was referred to the undersigned, then a United States Magistrate Judge, for all pretrial proceedings. On September 14, 2018, the undersigned was sworn in as a United States District Judge. This action was reassigned to the undersigned, as presiding judge, on September 18, 2018, and was subsequently referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On July 23, 2019, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that Defendants' motion to dismiss [ECF No. 31] be granted in part and denied in part, that Defendants Holman, Bryant, and Stevens be dismissed from this action with prejudice, and that Plaintiff's demand for specific liquidated damages be stricken. [ECF No. 43]. According to the R&R, the only surviving claims would be a First Amendment claim for retaliation against Defendants Lindsey and DeFranco and a Fourteenth Amendment due process claim based on conditions of confinement stemming from the alleged

retaliation. Defendants have since filed timely objections to the R&R [ECF No. 44], challenging the Magistrate Judge's refusal to treat Defendants' motion to dismiss as a motion for summary judgment and his consequent lack of consideration of numerous exhibits attached to Defendants' motion to dismiss. No timely objections have been received from Plaintiff.


After *de novo* review of the complaint and documents in the case, together with the report and recommendation and objections thereto, the Court agrees with Judge Lanzillo's decision to "reject Defendants' implicit invitation to consider matters outside of the pleadings" and to evaluate Defendants' motion in accordance with the standards applicable to Federal Rule of Civil Procedure 12(b)(6). Thus, the following order is entered:

AND NOW, this 23rd day of August, 2019;

IT IS HEREBY ORDERED that Defendants' motion to dismiss [ECF No. 31] is GRANTED as to Plaintiff's retaliation claim based on his legal assistance to other inmates, his denial of access to the courts claim, and his claim of deliberate indifference to a serious medical need, and such claims are DISMISSED, with prejudice. Defendants' motion is DENIED as to Plaintiff's retaliation claim based on his own protected activities and his Fourteenth Amendment due process claim regarding conditions of confinement.

IT IS FURTHER ORDERED that Defendants Holman, Bryant, and Stevens are dismissed from this action, and the Clerk is directed to terminate them on the docket; and Plaintiff's demand for specific liquidated damages is hereby stricken from the complaint. The report and recommendation of Magistrate Judge Lanzillo, issued July 23, 2019 [ECF

No. 43], is adopted as the opinion of the court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge